IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11719 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKHIL BHARATIYA NAAGAR PARISHAD

Versus

DISTRICT CONSUMER DISPUTE REDRESSAL FORUM COURT

Appearance:

1. Special Civil Application No. 11719 of 2004

MR TANVISH U BHATT for Petitioner No. 1

MR KS ACHARYA for Respondent No. 1

BALKRISHNA ACHARYA for Respondent No. 1

MR PK SONI for Respondent No. 1

MR RM CHHAYA for Respondent No. 2-4

NOTICE SERVED BY DS for Respondent No. 5-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/12/2004

ORAL JUDGEMENT

Rule. Shri RM Chhaya, learned advocate waives service of Rule on behalf of respondents No. 2 to 4.

With the consent of parties the matter is taken up for Final Hearing today.

2. In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the District Consumer Dispute Redressal Forum Court, Junagadh, dated 29.7.2004 by which the Consumer Dispute Redressal Forum Court has restrained the respondents No. 5 and 6 herein and the President of Akhil Bharatiya Naagar Parishad, Vadodara from in any way interfering with the respondent No.2 to act as a signatory authority with regard to Savings Bank account and the Fixed Deposit.

3. It appears that there is one Trust, namely Akhil Bharatiya Naagar Parishad {"the Naagar Parishad" for short is having one Branch/Chapter at Junagadh. The said Trust is having some savings bank and fixed deposit accounts. The respondent No.2 claiming to be the signatory authority wanted to operate the said savings bank account and the fixed deposit of the said Naagar Parishad and on objections being raised by some persons it is alleged that the respondent No.2 herein was not permitted to operate the Bank account and FDRs. The respondent No.2 has preferred Forum Case No. 306/2004 before the District Consumer Dispute Redressal Forum Court at Junagadh alleging inter alia that by not permitting him to operate the bank account as well as the fixed deposit there is deficiency in service. In the said application the respondent No.2 has posed himself as the Vice President of the Akhil Bharatiya Naagar Parishad, Junagadh Branch/Chapter. In the said case an application was given by the respondent No.2 for interim relief and the Consumer Forum Court passed the impugned order on 29.7.2004.

4. Being aggrieved and dissatisfied with the aforesaid interim order the petitioner as authorised representative of the Naagar Parishad has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

5. Shri Tanvish Bhatt, learned advocate appearing for the petitioner has submitted that the impugned order passed by the Consumer Forum Court is without any jurisdiction. He has further submitted that in view of the dispute between the trustees and on objections being raised if the Bank has not permitted the respondent No.2 to operate the Bank account as well as FDR it cannot be said to be deficiency in service. He has further submitted that in view of the dispute between the

trustees the Consumer Forum Court could not have entertained the said case and ought not to have entertained such dispute and ought not to have granted injunction/interim relief which is granted vide order dated 29.7.2004. He has further submitted that in fact the petitioner moved an application for joining as party in which an order for issuance of notice was passed making it returnable on 31.8.2004. However in the meantime the respondent No.2 herein withdrew the main case itself after taking advantage of the interim relief granted on 29.7.2004, which was objected to by the petitioner but the same was not considered. An application was also given to return the amount withdrawn by the respondent No.2 in which no orders are passed. Under the aforesaid circumstances, Shri Bhatt, learned advocate appearing on behalf of the petitioner while requesting for quashing and setting aside the order dated 29.7.2004/30.7.2004.

6. Shri RM Chhaya, learned advocate appearing for respondents No. 2 to 4 has submitted that after the withdrawal of the amount from the fixed deposit amount the amount is deposited with the Dena Bank, Junagadh Branch in the joint names of respondent No.2 to 4 and that the said amount is not being misused. He has also further submitted that if this Court is inclined to quash and set aside the order passed by the Consumer Forum Court, the respondents No. 2 to 4 have no objection and this Court may pass an appropriate order to deposit the amount in question in fixed deposit in joint names of respondent No.3 as well as one Dilipbhai Mankad, who is Secretary of the parent body, Akhil Bharatiya Naagar Parishad.

7. Heard the learned advocates appearing on behalf of the parties. If on the basis of the objections raised by some of the trustees and/or members of the Naagar Parishad if the respondent No.2 is restrained and/or not permitted to operate the Bank account and/or to deal with the fixed deposits it cannot be said that there was any deficiency in service. Under the circumstances, the case itself before the Consumer Dispute Court was not maintainable and the said Court could not have passed the order restraining the Bank as well as the President of the Naagar Parishad from in any way interfering with the operation of the bank account and the fixed deposit by respondent No.2. The order passed by the District Consumer Dispute Redressal Forum Court at Junagadh dated 29.7.2004 as well as 30.7.2004 are wholly without jurisdiction. Even subsequently the Forum Court has permitted the respondent No.2 to withdraw the said case

after the respondent No.2 has taken advantage of the interim relief by withdrawing the entire amount which was lying in the savings bank as well as in the fixed deposit accounts. The Consumer Forum Court could not have and ought not to have permitted the respondent No.2 to withdraw the case. Under the circumstances and for the reasons stated hereinabove the impugned orders dated 29/30th July 2004 being without jurisdiction require to be quashed and set aside and are hereby quashed and set aside. Consequently the respondent No.2 who has withdrawn the entire amount pursuant to the order dated 29/30th July 2004 is required to return the said amount and restore the position which was prevailing prior to the passing of the order dated 29/30th July 2004. However, in view of the consensus between the parties to the effect that the amount which is withdrawn by the respondent No.2 and which is at present deposited with the Dena Bank, Junagadh Branch in the name of respondents No.2 to 4 be invested in the fixed deposit account in the joint names of respondent No.3 and one Dilipbhai Mankad who is Secretary of the parent body, Akhil Bharatiya Naagar Parishad, it is directed that the amount which is withdrawn by the respondent No.2, and which is at present lying with the Dena Bank Branch in the joint names of respondents No. 2 to 4, be invested in a fixed deposit in the joint names of respondent No.3 namely Minaxi P. Buch and one Dilipbhai Mankad, who is Secretary of the parent body, i.e.,Akhil Bharatiya Naagar Parishad, initially for a period of 3 years.

8. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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